FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1946.

Nos. 42, 43.

In the Matter
of
AMERICAN FUEL & POWER COMPANY,
INLAND GAS CORPORATION,
KENTUCKY FUEL GAS CORPORATION,
Debtors.

VANSTON BONDHOLDERS PROTECTIVE COMMITTEE,
Petitioner,
—against—
LOUIS A. GREEN and ROBERT HEILBRUNN, Known in these Proceedings as the GREEN COMMITTEE and MORRIS GREEN,
Respondents.

VANSTON BONDHOLDERS PROTECTIVE COMMITTEE,
Petitioner,
—against—
CARL B. EARLY, DANIEL MATTHEWS, THOMAS MATTHEWS, JACK PATTON and P. G. MEADOR,
Respondents.

BRIEF FOR RESPONDENTS, GREEN COMMITTEE AND MORRIS GREEN, IN OPPOSITION TO PETITION FOR REHEARING.

OSCAR S. ROSNER,
Counsel for Respondents, Green Committee and Morris Green.

BAKER, OBERMEIER, ROSNER & ROSENSON,
Attorneys for Respondents, Green Committee and Morris Green.

OSCAR S. ROSNER,
Of Counsel.

JAY RAYMOND LEVINSON,
On the Brief.

THE COURT PRESS, N. Y. C.

Supreme Court of the United States

OCTOBER TERM, 1946.

Nos. 42, 43.

In the Matter
of
AMERICAN FUEL & POWER COMPANY,
INLAND GAS CORPORATION,
KENTUCKY FUEL GAS CORPORATION,
Debtors.

VANSTON BONDHOLDERS PROTECTIVE COMMITTEE,
Petitioner,
—against—
LOUIS A. GREEN and ROBERT HEILBRUNN, Known in these Proceedings as the GREEN COMMITTEE and MORRIS GREEN,
Respondents.

VANSTON BONDHOLDERS PROTECTIVE COMMITTEE,
Petitioner,
—against—
CARL B. EARLY, DANIEL MATTHEWS, THOMAS MATTHEWS, JACK PATTON and P. G. MEADOR,
Respondents.

BRIEF FOR RESPONDENTS, GREEN COMMITTEE AND MORRIS GREEN, IN OPPOSITION TO PETITION FOR REHEARING.

Petitioners seek a rehearing upon the basis of a purported showing that if this Court's decision stands, there are now assets sufficient "to make a payment on the stock of the Debtor" (Petition for Rehearing, p. 3). While we do not subscribe to any such conclusion, it is most significant to note that the Petitioners have not attempted to gainsay the observation of Mr. Justice Black, in the opinion of the Court, that "Should interest on interest be paid, however, sub-

ordinate creditors would receive a greatly reduced share in the reorganized corporation."

Since the Petitioners have assumed to offer recent figures which do not appear in the record, we may be justified in beginning our analysis by quoting from the latest statement made by the Trustee in a petition filed by him in the District Court on December 3, 1946:

> "If interest on the over-due coupons on said First Mortgage bonds should be allowed, such interest would amount to $1,304,237.06 as of September 30, 1946."

The Petitioners cite a red surplus of $1,013,151.90 as at December 31, 1943 and then proceed to apply against it an aggregate of "net income before interest on funded debt" of approximately $1,500,000.00 for the years 1944 through 1946. But they overlook the fact that no provision has been made for contingent income taxes (possibly amounting to $300,000.00) probably due from the Trustee on the taxable income earned by the Debtor. And certainly interest on the funded debt is a deduction which must be taken into consideration. For the three years in question, simple interest (6½%) on the unpaid balance of principal due on the first mortgage bonds amounts to approximately $260,000.00; on the 7% debentures, approximately $220,000.00; and on the second mortgage 6% notes, approximately $72,000.00. Thus, the total of income taxes and interest on funded debt amounts to approximately $850,000.00, which should be deducted from the figure of $1,500,000.00, leaving an actual net income for the three years of approximately $648,000.00.

At best, then, the red surplus of $1,013,151.90 might be reduced to a red surplus of $365,151.00 as a result

of the operations of the past three years. Adding the "interest on interest" sought by the first mortgage bondholders would serve to increase the indicated red surplus to $1,669,388.00.

Hence, even if the Petitioners' approach to the problem from the viewpoint of the equities were presumed to be a correct one (which we doubt), still the figures supplied to this Court do not show, as contended by the Petitioners, that there are now assets sufficient to make a payment on the stock of the Debtor.

Moreover, as we read the opinion of the Court delivered by Mr. Justice Black, the salient factor is that "In this case where by order of the court interest was left unpaid, we do not think that imposition of interest on that unpaid interest can be justified by 'an application of equitable principles.'" Nowhere in this statement of principle can we find any warrant for indulging in a minute dissection of figures as has been done in the Petition for Rehearing.

Accordingly, we respectfully urge that the Petition for Rehearing be denied.

Respectfully submitted,

OSCAR S. ROSNER,
Counsel for Respondents,
Green Committee and Morris Green.

BAKER, OBERMEIER, ROSNER & ROSENSON,
Attorneys for Respondents,
Green Committee and Morris Green.

OSCAR S. ROSNER,
Of Counsel.

JAY RAYMOND LEVINSON,
On the Brief.